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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of)

)
Amendment of Section 73.606(b),)
Table of Allotments, TV Broadcast)
Stations (New London and Suring,)
Wisconsin))

MM Docket No. 92-299
RM-8049

To: The Chief, Allocations Branch

RESPONSE OF WISCONSIN VOICE
OF CHRISTIAN YOUTH

Wisconsin Voice of Christian Youth, Inc. ("WVCY"), licensee of WSCO(TV), Channel 14, Suring, Wisconsin, and proponent of the above-referenced proposal to reallocate Channel 14 to New London, Wisconsin, hereby submits its limited response to the "Reply Comments" filed by Aries Telecommunications Corporation ("Aries") on or about March 16, 1993.

Aries' Reply Comments consist largely of arguments already presented to the Commission in its earlier filings, and WVCY will not repeat its response to those contentions here. In addition, however, Aries' Reply Comments raise two new points to which WVCY has not previously had the opportunity to respond. WVCY respectfully submits that the public interest will be served by consideration of this limited Response, which is intended to provide a complete record on these new matters.¹

¹ WVCY is filing concurrently herewith a motion for leave to file this Response.

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The Commission's Rules do not contemplate that third parties will be afforded the opportunity to comment, prior to the issuance of a notice of proposed rulemaking, on the acceptability of petitions for rulemaking involving amendments to the FM or Television Table of Allotments. See Section 1.405 of the Commission's Rules. Indeed, in 1981, the Commission revised the procedures governing proposals to

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petitions and the assignment of rule making numbers will be handled in the Notice of Proposed Rule Making. If any special problems require additional showings, that information can be requested in the Notice.

First Report and Order in BC Docket No. 80-130, 88 FCC 2d 631, 633 (1981). Aries' attempt to participate at the pre-notice stage thus was outside the contemplation of the Commission's rules governing FM allotment proceedings, and does not automatically give Aries party status in the proceeding subsequently commenced by the Commission.

Moreover, contrary to Aries' suggestion, the Commission's Notice of Proposed Rulemaking ("NPRM") in this proceeding did not confer party status upon Aries. Rather, the Commission in the NPRM merely noted Aries' previous filing, stated that it would be considered "in conjunction with the final resolution of this proceeding," and that Aries would be served with "a copy of this Notice." NPRM at ¶1, n.1.² In Paragraph 14 of the NPRM, which deals with the procedures for filing comments, the Commission specified that "a copy of such comments should be served on the petitioner, or its counsel or consultant," but did not specify service of petitioner's comments on Aries or any other party. Paragraph 17 of the NPRM, concerning ex parte presentations, is to the same effect. Finally, the Appendix to the NPRM, which sets

² In contrast, the Commission stated that WVCY's petition for reconsideration would be treated "as comments in this proceeding." Id.

able to obtain a copy of WVCY's opening filing from the Commission's records. Indeed, had counsel for Aries so requested, WVCY's counsel would have supplied a copy directly. As the Commission's NPRM makes clear, however, WVCY was not obligated to serve its opening comments on Aries or any other party.

2. New London, Wisconsin Is a Discrete Community, and the Proposed Reallotment Would Provide Its First Local Television Transmission Service

Aries also asserts in its Reply Comments -- for the first time -- that WVCY's proposal "is in reality one to bring a fourth service to the Appleton-Oshkosh-Neenah MSA," and therefore does not justify the removal of the channel from Suring. Aries Reply comments at 7 (emphasis in original). Again, WVCY submits, Aries' contention is entirely without merit.

First, as noted above, Aries did not advance this argument in its opening comments. The NPRM in this proceeding, however, squarely raised the question of the desirability of reallotting Channel 14 to New London, as proposed by WVCY, to "provide a first local television transmission service to that community." NPRM at ¶ 5.³ Thus, any question concerning New London's status as a distinct and "licensable" community should have been raised

³ Similarly, the Commission noted that the alternatively proposed allotment to Appleton "would enable Station WSCO to provide a second local commercial television transmission service to a much larger community. . . ." Id.

in Aries' opening comments. In those comments, however, Aries did not dispute that WVCY's proposals involved a first local transmission service to New London or, alternatively, a second local service to Appleton. See, e.g., Aries Comments at pp. 2-3, n. 3.

Second, while Aries asserts (Aries Reply Comments, p. 7) that New London "is situated on the boundary of Outagamie County, Wisconsin, which is part of the Appleton-Oshkosh-Neenah Metropolitan Statistical Area ('MSA')," Aries conveniently neglects to mention that most of the city of New London lies in Waupaca County, which is not part of the Appleton-Oshkosh-Neenah MSA. Approximately 66 percent of the land area of New London lies in Waupaca County, and only 33 percent in Outagamie County. Moreover, according to 1980 U.S. Census data, 4,941 (79.6%) of the 6,210 residents of the city of New London lived in Waupaca County, while 1,269 (20.4%) lived in Outagamie County. As of 1990, 5,321 (79.9%) of New London's 6,658 residents lived in Waupaca County, while 1,337 (20.1%) lived in Outagamie County. Aries' assertion that New London must be regarded as part of the adjacent MSA thus is highly disingenuous, and should not be accepted by the Commission.⁴

⁴ Indeed, Aries goes on in a footnote to its reply comments to attempt to add yet another community, Green Bay, to the Appleton-Oshkosh-Neenah MSA. Aries Reply Comments at p. 7, n. 3. MSAs are defined by the Census Bureau, however, and not by Aries' overly zealous advocacy.

Further, the cases cited by Tides would not support its


Further, in Bessemer/Tuscaloosa, a commenting party had submitted data showing that there was a substantial community of interests between Bessemer and Birmingham, a much larger city of 284,413. For example, in addition to being part of the same Urbanized Area, Bessemer was less than fifteen miles from downtown Birmingham, and was considered part of a county-wide metropolitan area by Bessemer officials. 5 FCC Rcd. at 669. In the instant proceeding, no comparable showing has been or could be made by Aries.

On the contrary, Appleton/Neenah and Oshkosh comprise two separate Urbanized Areas, neither of which includes or even adjoins New London. Appleton (1980 population 59,032) is located on the opposite side of Outagamie County, with smaller portions of the city in Calumet and Winnebago Counties, while Neenah (1980 population 22,432) and Oshkosh (1980 population 49,620) are in Winnebago County. New London is more than 20 miles from Appleton, approximately 30 miles from Oshkosh, and 40 miles or more from Green Bay (located in Brown County, which comprises the Green Bay MSA). Finally, Aries has offered no specific evidence whatsoever to suggest that New London is anything other than what WVCY has shown it to be -- a discrete community without any local television

transmission outlet. Accordingly, Aries' unsupported assertion should be rejected out of hand.⁶

Respectfully submitted,

WISCONSIN VOICE OF CHRISTIAN
YOUTH, INC.

By: 
James R. Bayes
Wayne D. Johnsen
of
WILEY, REIN & FIELDING
1776 K Street, NW
Washington, DC 20006
(202) 429-7000

Its Attorneys

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⁶ WVCY further submits, however, that even if the New London proposal were not regarded as providing a first local outlet, it would nonetheless be preferable to the current Suring allotment, which is not viable economically.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 1993, I
caused copies of the foregoing "Response" to be mailed via